

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN THOMAS RINEHART,

Defendant and Appellant.

D065092

(Super. Ct. No. SCE326699)

APPEAL from an attorney fees order of the Superior Court of San Diego County,  
William J. McGrath, Jr., Judge. Affirmed in part and reversed in part.

Joshua H. Schraer, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Sabrina Y.  
Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Sean Thomas Rinehart of one count of petty theft (Pen. Code,<sup>1</sup> § 484). The court suspended imposition of sentence and granted him three years' probation. The court ordered Rinehart to pay \$570 toward the cost of his court-appointed attorney as a condition of probation.

Rinehart contends that the \$570 attorney fees order is invalid and should be stricken or, in the alternative, the matter should be remanded because the court failed to hold a noticed hearing on Rinehart's ability to pay. We strike the attorney fees order.

### BACKGROUND

Rinehart stole a bicycle light from the sporting goods section of a Wal-Mart store in El Cajon. Two loss prevention guards for the store confronted Rinehart outside the store and retrieved the bike light from Rinehart. Rinehart then appeared to brandish a weapon. The guards disengaged. Rinehart fled the scene and sought to hide in the sewer. The guards called the police. The police tracked Rinehart down and detained him. One of the guards positively identified Rinehart as the shoplifter.

At the sentencing hearing, the court suspended imposition of sentence and granted three years' felony probation. In granting probation, the court ordered Rinehart to pay various fines listed in the written "Order Granting Felony Probation to the Court" (hereafter probation order) as indicated by a checked box next to each line item. The probation order includes a line item in paragraph 15 on page 4 indicating that the value of the attorney fees of his court-appointed counsel is \$570. The box next to this item is

---

<sup>1</sup> All further statutory references are to the Penal Code.

checked by computer marking. Farther down in that same paragraph is a line item that indicates the court's finding that Rinehart has the ability to pay the attorney fees and the court's intention to impose the attorney fees on Rinehart. This line item was checked by hand marking.

The court ordered Rinehart to pay the various fines and costs at a rate of \$50 or more per month. The court also ordered Rinehart (among other things) to stay away from the El Cajon Walmart store. The court asked Rinehart whether he understood and accepted the terms and conditions of his probation. Rinehart answered that he did.

## DISCUSSION

Rinehart contends that the \$570 attorney fees order is invalid because the court failed to hold a noticed hearing on his ability to pay as required by section 987.8, subdivision (b) (hereafter section 987.8(b)). Rinehart also argues that this portion of the probation order is invalid because "the judgment in a criminal case consists of the oral pronouncement, and here the imposition of attorney fees was never orally pronounced." Rinehart further asserts that the attorney fees order must be stricken or, alternatively, that this matter must be remanded for a noticed hearing on his ability to pay the fees. The Attorney General claims that Rinehart forfeited his right to challenge the attorney fees order on appeal by failing to object to it in the trial court. We conclude the attorney fees order should be stricken.

### *A. The Applicable Statute*

Section 987.8(b) provides in part: "In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the

court, upon conclusion of the criminal proceedings in the trial court, . . . the court may, *after notice and a hearing*, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof."<sup>2</sup> (Italics added.)

## B. *Background*

### 1. *The oral pronouncement of the judgment*

In its oral pronouncement of the judgment, the court stated it was granting Rinehart felony probation on the following terms and conditions:

"[Rinehart] will be ordered to pay the fine and other assessments listed in paragraph 2 of the imposed probation ordered [*sic*]. And those will be payable at the rate of \$50 or more per month starting on December 1, and on [the] first of each month thereafter until paid in full. [¶] *All other suggested terms on the proposed probation order*, including paragraph 5, extradition waiver, all checked items in item 8, and the following special conditions of probation, that is that the defendant stay away from the store where this occurred." (Italics added.)

### 2. *The written probation order*

The probation order is four pages long and contains 17 paragraphs. Each paragraph contains a number of line items, some of which have a box that can be checked to indicate that the item is included in the probation order. The boxes can be checked

---

<sup>2</sup> Section 987.8(b) provides in full: "In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided."

either by computer marking or by hand marking. Some of the line items have blank spaces where specific dollar amounts or instructions can be entered.

Paragraph 15 of the probation order is entitled "ATTORNEY FEES." The first line item in paragraph 15, which contains two boxes checked by computer marking, states in part: "The court finds the value of appointed attorney service is: \$570 (Class III) . . . for services provided by the following agency: . . . ." Immediately after the term "agency:" is a box, checked by hand, indicating that the agency in question was the "Public Defender."

Farther down in paragraph 15 is a line item with a box that is checked by hand marking and is followed by the language: "The court finds you have the ability to pay the costs of your court appointed attorney. [¶] You are ordered to reimburse the County of San Diego in the amount of \$570 for court appointed attorney fees." This line item with a checked box shows that the court imposed the attorney fees on Rinehart as part of the final probation order.

### *C. Analysis*

#### *1. The Attorney General's forfeiture claim*

The Attorney General cites *People v. Aguilar* (2015) 60 Cal.4th 862 (*Aguilar*) for the proposition that a defendant who fails to challenge, in the trial court, an order for reimbursement of attorney fees under section 987.8(b) forfeits his right to do so on appeal. The Attorney General asserts that this principle applies in this case. We disagree.

In *Aguilar*, without a defense objection, the trial court explicitly ordered the defendant to pay various fines and fees, including \$500 in attorney fees. (*Aguilar, supra*, 60 Cal.4th at p. 865.) The trial court also stated: "Many of these fees are going to be based on his ability to pay. When he contacts the probation office, he'll fill out fiscal financial assessment form [*sic*] and he can talk with the probation deputy about his ability to pay these various fees." (*Ibid.*) In holding that the defendant forfeited his claim that the trial court erroneously imposed the attorney fees without making a finding as to his ability to pay, our Supreme Court explained in *Aguilar* that the "defendant had two opportunities to object to the fees the court imposed, and availed himself of neither. Defendant . . . could have objected when the court, at sentencing, announced the fees it was imposing . . . . Furthermore, the [trial] court advised defendant he would have the opportunity to assert inability to pay in subsequent proceedings before the probation officer." (*Id.* at pp. 867-868.)

Here, Rinehart could not have been expected to object to the attorney fees unless he had notice that the court intended to impose that order. It is not clear from the record that the court gave adequate notice to him that attorney fees were being imposed. The Attorney General acknowledges that "the trial court did not say the words, 'attorney fees'" when it pronounced its rulings. Although, the court specifically mentioned paragraphs 2, 5, and 8, it did not mention paragraph 15, the portion of the probation order titled "ATTORNEY FEES."

We presume that the computer markings in the paragraph 15 line items, stating the cost of Rinehart's court-appointed counsel, were made as part of the proposed probation

order. Thus, the court, the Attorney General, and Rinehart would have been able to see those checked boxes in paragraph 15 and the corresponding provisions at the sentencing hearing. However, these first line items in paragraph 15 did not provide notice that attorney fees were being imposed on Rinehart; they simply indicated the value of the services rendered.

Farther down in paragraph 15 is the line item with the box that is checked by hand marking and followed by the language: "The court finds you have the ability to pay the costs of your court appointed attorney. [¶] You are ordered to reimburse the County of San Diego in the amount of \$570 for court appointed attorney fees." The record is unclear whether this particular line item's box was checked as part of the proposed probation order or whether the court checked the box after the sentencing hearing when it finalized the probation order. The Attorney General appears to acknowledge that the record is unclear on this point. In the respondent's brief, the Attorney General states, "So far as [the Attorney General] can tell . . . the 'Proposed Probation Order' is the same document as the 'Order Granting Felony Probation to the Court.'"

We conclude that Rinehart did not forfeit his right to contest the attorney fees order on appeal. Unlike the court in *Aguilar*, the court did not explicitly put Rinehart on notice of the imposition of attorney fees.

## 2. *Merits*

Rinehart argues that the attorney fees order is invalid because, under section 987.8(b), he was entitled to a noticed hearing on his ability to pay the attorney fees, but he did not receive one. We agree. When the court granted Rinehart probation, it **orally**

imposed a number of fines and other assessments and ordered Rinehart to pay them at a rate of \$50 per month or more.<sup>3</sup> However, the court did not orally pronounce to Rinehart that he was required to pay attorney fees and nothing in the record indicates how the court determined his ability to pay the attorney fees.

We conclude that the attorney fees order is invalid because the record fails to show that the court provided notice and a hearing on Rinehart's ability to pay the attorney fees as required by section 987.8(b). Thus, we reverse the portion of the probation order requiring Rinehart to pay \$570 in attorney fees. However, rather than remand the case for a noticed hearing pursuant to section 987.8(b), we elect to strike the attorney fees order in the interest of promoting judicial economy and efficiency.

#### DISPOSITION

The portion of the probation order requiring Rinehart to pay attorney fees in the amount of \$570 is reversed and stricken. In all other respects, the judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.

---

<sup>3</sup> Rinehart does not contest these fines and other assessments.